

Commissioner, or the Virginia State Corporation Commission; and (ii) and CareFirst shall, within seven days of the receipt thereof, furnish to Purchaser any report of examination (financial, market conduct or otherwise) pertaining to any CareFirst Company issued by the Maryland Administration, the D.C. Superintendent, the Delaware Commissioner, or the Virginia State Corporation Commission.

## ARTICLE VII

### Conditions

#### Section 7.1. Conditions to Each Party's Obligations.

The respective obligation of each party to effect the Merger and the other transactions to be effected contemporaneous with or as a result of the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) *Conversion.* The Conversion shall have occurred substantially on the terms set forth on Appendix A or on such other terms that do not reduce the value or benefits of the transaction to Purchaser.

(b) *Shareholder Approval.* If required, this Agreement and the Merger shall have been approved at or prior to the Effective Time by the requisite vote of the shareholders of Purchaser in accordance with generally applicable law and the Certificate of Incorporation and Bylaws of Purchaser.

(c) *No Injunction.* No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental authority which prohibits or prevents the consummation of the transactions contemplated hereby and which has not been stayed or vacated by the Effective Time. Each of CareFirst, CFAC, and Purchaser shall use its Best Efforts and shall cooperate with each other to have any such order, statute, rule, regulation, executive order, stay, decree, judgment or injunction vacated, lifted or stayed.

(d) *HSR Act.* Any waiting period applicable to the Merger under the HSR Act shall have expired or earlier termination thereof shall have been granted.

(e) *NYSE Listing.* The Purchaser's Class A Common Stock issuable in the Merger shall have been approved for listing on the NYSE upon notice of issuance.

(f) *Consent of State Regulators.* All consents of the Maryland Administration, the D.C. Superintendent, the Delaware Commission and any other appropriate state regulatory bodies that are required to consummate the transactions contemplated hereby shall have been obtained pursuant to orders which by their respective terms do not impose any Materially

Burdensome Condition, and such orders shall have become final, shall no longer be subject to appeal, and shall be in full force and effect.

(g) *Approval of the Blue Cross Blue Shield Association.* Any required approval of the BCBSA shall have been obtained, and each Tax-Exempt Entity that, immediately following the Merger, owns five percent or more of the then outstanding Class A Common Stock of Purchaser shall have entered into a Voting Trust Agreement with Purchaser containing substantially the terms set forth in Appendix F.

(h) *Receipt of Private Letter Ruling.* CareFirst shall have received the Private Letter Ruling, which shall be favorable in all material respects.

~~(i) *Purchaser Stock Price.* The average closing price of the Purchaser's Class A Common Stock on the New York Stock Exchange during the 20 trading days ending five trading days before the Closing shall be at least \$\_\_\_\_\_ per share.~~

#### Section 7.2. Conditions to Obligations of CareFirst.

The obligation of CareFirst to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions, any one or more of which may be waived in writing by CareFirst:

(a) *Obligations Performed.* Purchaser and CFAC shall have performed and complied with in all material respects their obligations, agreements and covenants under this Agreement which are required to be performed or complied with by them at or prior to the Effective Time.

(b) *Representations and Warranties True at Closing Date.* As of the Effective Time, the representations and warranties contained in Article V shall be true and correct in all respects as if made on and as of the Closing Date (except in each case for (i) such changes that are caused required by Purchaser's compliance with the terms of this Agreement, and (ii) representations and warranties that address matters only as of a date or with respect to the period of time specified therein; provided, however, that with respect to the representations and warranties other than those already qualified by Purchaser Material Adverse Effect, such representations and warranties shall be deemed true and correct unless the failure of such representations and warranties to be true and correct, in the aggregate, would result in a Purchaser Material Adverse Effect.

(c) *Certificate Delivered.* Purchaser and CFAC shall have delivered to CareFirst a certificate executed on their behalf by their respective Presidents or other authorized executive officer in its corporate capacity to the effect that the conditions set forth in subsections 7.2(a) and 7.2(b) have been satisfied.

(d) *Articles of Merger.* CFAC shall have executed and delivered the Articles of Merger in accordance with Section 2.2 hereof.

(e) *Appointment of CareFirst Directors.* Purchaser shall have taken all action necessary to appoint to the Board of Directors of Purchaser the persons selected pursuant to Section 6.13.

(f) *Effective Resale Registration Statement.* The Resale Registration Statement shall have been declared effective by the SEC and no stop order suspending the effectiveness of the Resale Registration Statement shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the SEC.

(g) *No Material Adverse Effect.* There shall not have occurred an event, any event, occurrence, development or state of circumstances or facts that, in the aggregate, has had, or that would reasonably be expected to have, a Purchaser Material Adverse Effect.

### Section 7.3. Conditions to Obligations of Purchaser and CFAC.

The obligation of Purchaser and CFAC to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions, any one or more of which may be waived in writing by Purchaser:

(a) *Obligations Performed.* CareFirst shall have performed and complied with in all material respects its obligations, agreements and covenants under this Agreement which are required to be performed or complied with by it at or prior to the Effective Time.

(b) *Representations and Warranties True at Closing Date.* As of the Effective Time, the representations and warranties contained in Article IV shall be true and correct in all respects as if made on and as of the Closing Date (except in each case for (i) such changes that are caused required by CareFirst's compliance with the terms of this Agreement, and (ii) representations and warranties that address matters only as of a date or with respect to the period of time specified therein; provided, however, that with respect to the representations and warranties other than those already qualified by CareFirst Material Adverse Effect, such representations and warranties shall be deemed to be true and correct unless the failure of such representations and warranties to be true and correct, in the aggregate, would result in a CareFirst Material Adverse Effect; and provided further, that no representation or warranty contained in Section 4.11 shall be violated by reason of the expiration of any CareFirst Material Contract in accordance with its terms.

(c) *Certificate Delivered.* CareFirst shall have delivered to Purchaser a certificate executed on its behalf by its President or another authorized executive officer in its corporate capacity to the effect that the conditions set forth in subsections 7.3(a) and 7.3(b) have been satisfied.

(d) *Articles of Merger.* CareFirst shall have executed and delivered the Articles of Merger in accordance with Section 2.2 hereof.

(e) *No Material Litigation.* There shall not be pending or overtly threatened any suit, material litigation or other similar proceeding that seeks to challenge, overturn,

~~modify or collaterally attack the Conversion or to the other transactions contemplated by this Agreement and as to which it is likely that there will be a material liability to the Purchaser Companies or the CareFirst Companies, each taken as a whole, (a "Material Case"); provided, however, that the term "Material Case" shall not include any pending appeal of any regulatory approval or the Merger or any order of the Maryland Administration, the D.C. Superintendent, or the Delaware Commissioner approving the Conversion which appeal relates solely to the Merger, including any litigation that (i) contests the issuance of all of the stock of CareFirst to whether the conversion and other transactions contemplated by this Agreement should have been approved and does not seek damages Tax Exempt Entities or seek the allocation of the stock of CareFirst among the Tax Exempt Entities, or (ii) seeks to alter the terms of such transactions; provided further, however, that in the event impose on any CareFirst Company or Purchaser notifies the other that it considers a matter to be a Material Case, CareFirst and Purchaser agree that either may refer the matter to an independent arbitrator mutually acceptable to the parties (the "Independent Arbitrator") for a determination of whether the matter is a Material Case Company any Materially Burdensome Condition. The Independent Arbitrator shall hold a hearing (which shall be held pursuant to such rules and procedures as the parties may agree upon or shall be established by the Independent Arbitrator) and render a decision, which shall be final and binding upon the parties, within ten days following either party's request. Each party shall be entitled to submit a written brief or statement of position to the Independent Arbitrator (with a copy being simultaneously provided to the other party) prior to the hearing. The costs and expenses of the Independent Arbitrator shall be borne equally by Purchaser and CareFirst.~~

(f) No Material Adverse Effect. There shall not have occurred any event, occurrence, development or state of circumstances or facts that, in the aggregate, has had, or that would reasonably be expected to have, a CareFirst Material Adverse Effect.

## ARTICLE VIII

### Termination Prior To Closing

#### Section 8.1. Termination of Agreement.

This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time, whether before or after approval by the shareholders of Purchaser:

- (a) By the written agreement of CareFirst and Purchaser;
- (b) By either of CareFirst or Purchaser in writing, if the Merger or Conversion shall not have been consummated on or before the eighteen (18) month anniversary of this Agreement (or such later date as may be agreed to in writing by CareFirst and Purchaser); provided, however, that neither CareFirst nor Purchaser may terminate this Agreement under this Section if the failure has been caused by such party's material breach or default of its obligations under this Agreement;

(c) By CareFirst in writing, if Purchaser or CFAC shall have (i) materially-breached any of their respective covenants contained herein or (ii) breached any of their respective representations or warranties contained herein which (in the case of clauses (i) and (ii)), (A) in the aggregate, has resulted in a Purchaser Material Adverse Effect, and (B) is not capable of being cured within 60 days after notice of breach;

(d) By Purchaser in writing, if CareFirst shall have (i) materially-breached any of its covenants contained herein or (ii) breached any of its representations or warranties contained herein which (in the case of clauses (i) and (ii)), (A) in the aggregate, has resulted in a CareFirst Material Adverse Effect, and (B) is not capable of being cured within 60 days after notice of breach; provided, however, that if CareFirst breaches any covenant set forth in Section 6.1(a) or 6.20, then Purchaser may terminate this Agreement in writing if such breach is not capable of being cured within 60 days, whether or not such breach has resulted in a CareFirst Material Adverse Effect;

(e) By either of CareFirst or Purchaser in writing, if any order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental authority which prohibits or prevents the consummation of the transactions contemplated hereby, provided that Purchaser, CFAC and CareFirst shall have used their respective Best Efforts to have any such order, statute, rule, regulation, executive order, stay, decree, judgment or injunction vacated, lifted or stayed and the same shall not have been vacated, lifted or stayed within 30 days after entry, by any such court or governmental or regulatory agency;

~~(f) By CareFirst in writing, if the condition set forth in Section 7.1(b) is required but not satisfied within 180 days after the Plan of Conversion is filed with the Maryland Administration, the D.C. Superintendent and the Delaware Commission;~~

(g) By CareFirst in writing, if the Board of Directors of CareFirst authorizes CareFirst to execute a binding written agreement with respect to a transaction that constitutes a Superior Proposal; provided, however, that prior to any termination pursuant to this Section 8.1(g), (i) the Board of Directors of CareFirst, after consultation with legal counsel, shall determine in good faith that contemplation of such Superior Proposal and termination of this Agreement is required for such Board of Directors to comply with its duties under applicable law, (ii) CareFirst notifies Purchaser in writing that it intends to enter into such an agreement and provides Purchaser with the proposed definitive documentation for such Superior Proposal and (iii) Purchaser does not, within seven days after the receipt of such written notice and documentation, provide a written offer that the Board of Directors of CareFirst determines in good faith, after application of the analysis set forth in Section 6.14, to be at least as favorable as the Superior Proposal;

(hg) By either of CareFirst or Purchaser in writing, if the Maryland Administration, the D.C. Superintendent or the Delaware Commissioner disapproves the Conversion or the Merger after a Hearing and such disapproval is reflected in a final order that is not subject to further appeal; or

(h) By either of CareFirst or Purchaser in writing, if the FTC or the DOJ notifies any party in writing of an intent to file a suit, action or proceeding to prohibit or restrain the consummation of the transaction contemplated by this Agreement.

(i) By Purchaser in writing if CareFirst fails to make the filings that it is required to make under Section 6.8(a) within the time period specified in Section 6.8(a);

(i) By CareFirst in writing if Purchaser fails to make the filings that it is required to make under Section 6.8(c) within the time period specified in Section 6.8(c);

(k) By Purchaser in writing if on or before nine (9) months from the date of this Agreement either (i) the federal legislation referred to in Appendix G shall not have been enacted, or (ii) the Delaware legislation referred to in Appendix G shall not have been enacted; or

(l) By Purchaser in writing if communications from any regulatory authority or body or any other facts or circumstances arise that (i) clearly establish that the Conversion and the Merger cannot be accomplished on or before the date specified in Section 8.1(b), or (ii) clearly establish that the Conversion cannot be established on substantially the terms set forth on Appendix A or on such other terms that do not reduce the value or benefits of the transaction to Purchaser.

#### Section 8.2. Termination of Obligations; Liquidated Damages.

(a) A termination of this Agreement pursuant to this Article VIII shall terminate all obligations of the parties hereunder without further liability, except for the obligations under Section 9.6 hereof and except as otherwise provided in this Section 8.2.

(b) If this Agreement is terminated by CareFirst for breach pursuant to Section 8.1(c), then Purchaser shall, upon CareFirst's written request, reimburse CareFirst within fifteen (15) days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby. In the event

(c) If this Agreement is terminated by Purchaser for breach pursuant to Section 8.1(d), then CareFirst shall, upon Purchaser's written request, reimburse Purchaser within fifteen (15) days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby. Such reasonable expenses shall include 100 percent (100%) of all Regulatory Fees that have been incurred by Purchaser.

(d) If this Agreement is terminated for any reason other than pursuant to Section 8.1(c) or Section 8.1(d), then CareFirst shall upon Purchaser's written request reimburse Purchaser within fifteen (15) days after demand for 50 percent (50%) of all Regulatory

Fees (documented in reasonable detail) that have been incurred by Purchaser in connection with this Agreement and the transactions contemplated hereby.

(e) If this Agreement is terminated by CareFirst pursuant to Sections~~Section 8.1(e) or, then CareFirst shall pay Purchaser, within fifteen (\$15), then Purchaser shall, upon CareFirst's written request, reimburse CareFirst within 15 days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby up to an aggregate amount equal to \$ \_\_\_\_\_, (2) by Purchaser pursuant to Section 8.1(d), then CareFirst shall, upon Purchaser's written request, reimburse Purchaser within 15 days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby up to an aggregate amount equal to \$ \_\_\_\_\_, (3) by CareFirst pursuant to Section 8.1(g), then CareFirst shall be obligated to pay Purchaser, within 15 days after such termination, a termination fee of \$37.565 million, or (4) by Purchaser pursuant to, CareFirst's obligation under this Section 8.18.2(dc) and shall be in addition to CareFirst's obligation to pay 50 percent (50%) of all Regulatory Fees under Section 8.2(d).~~

(f) If (i) this Agreement is terminated by Purchaser for any reason or by CareFirst for any reason other than pursuant to Section 8.1(c), and (ii) within 12 twenty-four (24) months after such termination CareFirst enters into a definitive agreement with respect to, or consummates, another Merger Proposal, then CareFirst shall be obligated to pay Purchaser, within fifteen (15) days after entering such definitive agreement or consummating such Merger Proposal, a termination fee of \$37.565 million. CareFirst's obligation under this Section 8.2(f) shall be in addition to any obligation that CareFirst may have to pay expenses under Section 8.2(c) or to pay 50 percent (50%) of all Regulatory Fees under Section 8.2(d).

(bg) The parties agree that the liquidated damages and reimbursement of expenses set forth in this Section 8.2(a) shall be the total damages and sole remedy of the parties upon the termination of this Agreement; provided, however, that termination pursuant to subparagraphs (e) or (d) of Section 8.1 hereof (c) or (d) shall not relieve at the party that willfully or intentionally defaults or breaches from any liability to the other party hereto.

## ARTICLE IX

### Miscellaneous

#### Section 9.1. Entire Agreement.

This Agreement (including the Appendices and the Disclosure Schedules) constitutes the sole understanding of the parties with respect to the subject matter hereof; provided, however, that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement, or abrogate the effect of the Confidentiality Agreement.

Section 9.2. Amendment.

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

Section 9.3. Parties Bound by Agreement; Successors and Assigns.

The terms, conditions and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto prior to the Effective Time without the prior written consent of the other parties hereto. Except for the parties hereto and any person or entity covered by an indemnification provision hereunder, this Agreement is not intended to confer upon any other person any rights or remedies hereunder.

Section 9.4. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

Section 9.5. Modification and Waiver.

Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 9.6. Expenses.

Except as otherwise expressly provided herein, if the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses, subject to the rights of such party contemplated under Article VIII with respect to a willful breach, violation or default by the other party hereto.

Section 9.7. Survival of Representations and Warranties.

The respective representations and warranties of CareFirst, Purchaser and CFAC contained herein or in any certificates or other documents delivered prior to or at the Closing by such parties pursuant to the terms of this Agreement shall terminate upon the consummation of the Merger and be of no further force and effect.



Section 9.8. Notices.

Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (including by overnight courier or express mail service), postage or fees prepaid, or sent by facsimile with original sent by overnight courier,

If to Purchaser:

SHIELD

~~[COMPANY]~~ TRIGON BLUE CROSS BLUE

~~[Street Address]~~

~~[City, State, Zip Code]~~

2015 Staples Mill Road

Richmond, VA 23230

Facsimile: (804) 354-

3115

Attn: [Name] Thomas G. Sneed,

Jr.

Chairman of the Board and  
Chief Executive Officer

~~[FIRM NAME]~~ TRIGON BLUE CROSS BLUE

~~[Street Address]~~ 2235 Staples Mill Road, Suite 401

~~[City, State, Zip Code]~~

Richmond, VA 23230

Facsimile: (804) 354-

5738

Attn: [Name] J. Christopher Wiltshire, Esq.  
Senior Vice President, General Counsel

and

Corporate Secretary

If to CareFirst:

CAREFIRST, INC.

10455 Mill Run Circle

Owings Mills, Maryland 21117

Facsimile: (410) 998-5732

Attn: William L. Jews

President and Chief Executive Officer

CAREFIRST, INC.

10455 Mill Run Circle

Owings Mills, Maryland 21117

Facsimile: (410) 998-7810

Attn: John A. Picciotto, Esq.

Executive Vice President

with a copy (which shall  
not constitute notice) to:

and General Counsel

or at such other address for a party as shall be specified by like notice. Any notice which is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or the office of such party. Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, the time of actual receipt.

#### Section 9.9. Governing Law.

This Agreement is executed by the parties hereto in and shall be construed in accordance with and governed by the laws of Maryland without giving effect to the principles of conflict of laws thereof.

#### Section 9.10. Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

(a) Words importing the singular number include the plural number and words importing the plural number include the singular number.

(b) Words of the masculine gender include correlative words of the feminine and neuter genders.

(c) The headings and the Table of Contents set forth in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement or affect its meaning, construction or effect.

(d) Any reference to a particular Article, Section, Appendix or Attachment shall be to such Article, Section, Appendix or Attachment of this Agreement unless the context shall otherwise require.

(e) The terms "agree" and "agreement" shall include and mean "covenant," and all agreements contained in this Agreement are intended to constitute covenants and shall be enforceable as such.

(f) For purposes of this Agreement, a Party shall be deemed to have "knowledge" of a matter if any Executive Employee, director or trustee of the Party or any of its Subsidiaries has received written notice or otherwise has actual knowledge of such matter or, in the reasonable exercise of such Executive Employee's, director's or trustee's duties in the ordinary course of business, should have known of such matter. Attached hereto as Attachment 9.10 is a list of each Party's Executive Employees.

(g) Whenever the words "include," "includes" and "including" are used in this Agreement, they are deemed to be followed by the words "without limitation."

(h) The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision.

(i) All share and price calculations will be appropriately adjusted for any stock dividends, stock splits or similar events.

#### Section 9.11. Waiver of Jury Trial.

Each party hereto waives its rights to a trial by jury in connection with any matter related to the Conversion, the Merger or this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Purchaser, CareFirst and CFAC as of the date first above written.

ATLANTIC

By: \_\_\_\_\_

Name:

Title:

CAREFIRST, INC.

By: \_\_\_\_\_

Name: William L. Jews  
Title: President and Chief  
Executive Officer

CF ACQUISITION CORP.

By: \_\_\_\_\_

Name:

Title: